

P A R L E M E N T E U R O P E E N

COMMISSION DES AFFAIRES ETRANGERES ET DE LA SECURITESous-commission "Droits de l'Homme"COMMUNICATON AUX MEMBRES

Objet : Timor oriental

Les membres trouveront en annexe, pour information, un exemplaire du rapport d'Asia Watch sur le Timor oriental, en vue de l'audition publique sur le "respect des droits de l'homme au Timor oriental". Le texte est uniquement disponible dans la langue originale l'anglais.

DIRECTION GENERALE DES COMMISSIONS
ET DELEGATIONS

Annexe

3 mars 1992

Asia Watch

A COMMITTEE OF HUMAN RIGHTS WATCH

January 9, 1992

Vol 4, No.2

ASIA WATCH CALLS FOR INTERNATIONAL MONITORS AT TRIALS OF EAST TIMORESE

Over 60 East Timorese, many of them students, remain in detention in Jakarta and Dili, capital of East Timor in the aftermath of the November 12 massacre in Dili in which upwards of 75 demonstrators were killed when Indonesian troops opened fire. All are facing trial, some on criminal charges, some on charges of subversion. Asia Watch believes that most were in fact arrested for the non-violent expression of their support for East Timor's independence and should be released unconditionally; any who engaged in violence should be charged with an appropriate criminal offense and have all the rights guaranteed to detainees by domestic and international law. Asia Watch is concerned at reports that several students, including two of four East Timorese transferred from Bali to Jakarta in late December, were severely beaten or otherwise mistreated. For the first weeks of their detention, all the East Timorese were denied access to friends, family, and counsel; some still are being held incommunicado. One Indonesian lawyer, Ponco Atmono, has taken on 20 of the cases of those detained in Dili; he is believed to have been government-appointed.

Asia Watch believes that international observation of these trials, expected to start next month in Jakarta and Dili, is critically important as an indication of continuing concern with the aftermath of the November 12 massacre, with the situation in East Timor more generally, and with the administration of justice by Indonesian officials.

I. DETAINED IN DILI

Two groups of East Timorese are detained in Dili, 26 suspected of taking part in or organizing the November 12 demonstration and seven others, at least five of whom are believed to have been arrested for their role in an earlier incident on October 28 when a group of motorcyclists backed by the military sparked a clash with pro-independence youth living in the Motael Church in Dili. The Indonesian army stormed the church, killing one man, Sebastiao Gomes Rangel, whose death became the focus of the November 12 demonstration. A man with the cyclists was also killed.

Those arrested after November 12 including several senior local government officials, including Filomeno Gomes, 50, an official in the office of East Timor governor Mario Carrascalao, and Bonifacio Barrero (Pereira?), head of logistics for the governor's office. A nurse named Matias Gouveia Duarte, employed by the Indonesian Red Cross, is also in custody, accused of having hidden resistance leader Xanana Gusmao in Dili for 12 days prior

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to the November 12 demonstration.¹ Another nurse at the state hospital in Dili, Gregorio Saldanha, is accused of having been a leader of the demonstration and is one of the 14 charged with subversion. A partial list of other detainees appears at the end of this section.

The total of 33 detainees may rise as those wounded in the demonstration are released from the military hospital where all the injured were taken for treatment (despite the fact that the civilian hospital was closer to the site of the shootings). As of early January, the Dili detainees were being held in various police commands; it was expected that after their dossiers had been prepared for prosecution, they would be moved to one of Dili's two civilian prisons to await trial.

According to East Timor's police chief, Colonel Ishak Kodijat, told reporters on December 28 that 14 of the 33 would be charged with violations of Presidential Decree 11/1963, the so-called "Anti-Subversion Law." The charge carries a maximum penalty of death, although it is unlikely that the death penalty will be imposed. (Until this group was arrested, no East Timorese had been charged with subversion; the hundreds tried in the mid-1980s for support of the armed independence organization Fretilin were charged under the Indonesian Criminal Code with engaging in separatist activities, a lesser offense.)

The names known thus far of the Dili detainees are as follows:

1. Filomeno Gomes
2. Bonifacio Barrero (Pereira?)
3. Bonifacio Magno
4. Francisco Branco
5. Carlos Lemos
6. Juanico dos Santos
7. Jacinto Aleves
8. Filomeno Periera
9. Aleixo da Silva Gama
10. Mario Abel
11. Joao
12. Jose Francisco
13. Dobento de Jesus
14. Joaquim
15. Marcio
16. Simplicio
17. Akau
18. Lourenco
19. Matias Gouveia Duarte
20. Ano Pereira
21. Francisco Gregorio da Costa Saldanha

II. DETAINED IN JAKARTA

As of early January, 25 East Timorese students remained in police custody in the

¹ Agence France Presse, Jakarta, December 23, 1991.

Metropolitan Jakarta Police station (Polda). Of these, 21 had been there since November 19, when they took part in a demonstration to protest the killings in Dili one week earlier. The demonstration was broken up by security forces.² The 21 were joined in late December by four students from Bali, two of whom are believed to have been badly beaten.

The four East Timorese from Bali were arrested on November 24 from their rented house in Denpasar. Three, Fernando Araujo, Jose M. Pompeia, and Clemente Soares, are students at Udayana University in Denpasar. The fourth, Antonio Matos, is an economics student at the National Education University there. Two other Udayana students arrested with them were released after three days. Police claim to have found two grenades and flags of Fretilin and Falintil, the Fretilin guerrilla army, in their house; the students say they were planted.

The four were first brought to the Badung-Denpasar Police Resort (Polres). On December 20, Fernando Araujo was moved to Jakarta, followed by the other three on December 22. Lawyers from Indonesia's Legal Aid Institute, an independent human rights organization, were allowed to visit Antonio Matos and Clemente Soares earlier this week (week of January 6) but they were not permitted to see Fernando Araujo or Jose Pompeia, apparently because the two were still suffering from the results of severe beatings received earlier. It was not clear whether the beatings had taken place while the two were detained in Bali or after they were moved to Jakarta.

The 21 students accused of taking part in the November 19 demonstration were part of a larger group of 70 arrested when the demonstration was broken up. The Indonesian government initially denied that anyone had been detained. It was not until November 27, over a week later, that the government acknowledged the detentions, releasing 49 and keeping 21 others in custody. The 21 are expected to be charged under Article 154 and 155 of the Criminal Code, spreading feelings of hatred or enmity toward the government, which carries a maximum penalty of seven years.

One of the 49, a woman, issued a statement on December 29, describing the treatment of the group after the arrests. She said they were first taken to a smaller police station (police resort or polres) where for the first three nights, all 70 had to sleep on the floor. They were called one by one for interrogation sessions which could last as long as eight to ten hours. They were asked who had ordered them to come to Jakarta (most were students at universities elsewhere in Java), who funded them, why had they embarrassed the Indonesia, who had thought up the ideas for the petition the group submitted to Jakarta-based UN representatives and posters carried in the demonstration, and who was their leader in Jakarta.

They were then moved to the Metropolitan Jakarta Police command where men and women were separated. The statement said the women were ordered to strip naked and jump in place. Interrogations continued, and the woman said she was forced to sign a "confession." Among other questions she and others were asked was whether they knew

² See Asia Watch, "East Timor: The November 12 Massacre and Its Aftermath", December 12, 1991, for an account of this demonstration.

H.J.C. Princen, a well-known human rights activist, and Indra Tjahjono, leader of an environmental activist organization called SKEPHI. Both men were called in for questioning about their role in organizing the November 19 demonstration, but were allowed to return home when the interrogation was over.

In addition to the four students from Bali, the 21 students still detained at the Metropolitan Jakarta Police Station are as follows:

STUDENT	UNIVERSITY
1. Joao Freitas Camara	unknown
2. Benevides C. Barrol	Satya Wacana, Salatiga
3. Domingos Barreto	Atmajaya, Jakarta
4. Metodio Muniz	Diponegoro, Semarang
5. Francisco Vasco Ramos	Atmajaya, Jakarta
6. Joselius De Oliveira	API, Yogyakarta
7. Sergio Dias Q	Atmajaya, Jakarta
8. Judio da Costa	IKIP Santa Dharma, Yogyakarta
9. Antonio Lopez	IPI, Malang
10. Virgilio	Nat'l Inst. of Technology, Malang
11. Antonio Soares	Malang
12. Felipe da Silva	Ikopin, Bandung
13. Joao Sarmento	Polytechnic, ITB, Bandung
14. Fausto Berhading	IKOPIN, Bandung
15. Joao Travolta	Udayana, Den Pasar
16. Agapito C.	Udayana, Den Pasar
17. Gregorio de Araujo	LPPU, ITB, Bandung
18. Jose Maria Belo	Polytechnic, ITB, Bandung
19. Avelino Maria	Satya Gama, Jakarta
20. Mario Canecas	Surabaya
21. Egas Q. Monteiro	Surabaya

* * * *

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Asia Watch was founded in 1985 to monitor and promote internationally recognized human rights in Asia. The Chair is Jack Greenberg and the Vice Chairs are Harriet Rabb and Orville Schell. The Executive Director is Sidney Jones and the Washington Director is Mike Jendrzeczyk.

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Asia Watch

A COMMITTEE OF HUMAN RIGHTS WATCH

January 3, 1992

Volume 4, No.1

ASIA WATCH CRITICIZES COMMISSION REPORT ON EAST TIMOR

Asia Watch has studied the preliminary report of the National Commission of Inquiry prepared by the seven-person team appointed by President Suharto to investigate the killings in Dili, East Timor on November 12, 1991, when Indonesian armed forces opened fire on unarmed demonstrators.¹ It has also reviewed the Indonesian press covering the two and a half week long investigation and interviewed people in Dili at the time the investigation was taking place. Based on these sources, Asia Watch concludes that the National Commission's investigation was fatally flawed by the Commission's government ties and by the lack of experience of those involved in conducting investigations of this kind. Given the way the investigation was conducted, its findings as published in the preliminary report -- which take the army's position that security forces fired on demonstrators in self-defense -- cannot be accepted, and the need for an international investigation is all the more urgent.

It is true that the appointment of the Commission was the first time the Indonesian government had ever recognized the need to respond so publicly to international criticism of human rights abuses by the army. It is true that the Commission head, M. Djaelani, appeared to take his assignment seriously according to those who met with him in Dili, and that the preliminary report was critical of security forces whose actions, it said, "exceeded acceptable norms." The report also acknowledged that the official death toll of 19 was far too low. Finally, it is true that two senior commanders, Brigadier General Rudolf Warouw (head of the army's Operational Command for East Timor) and the Bali-based regional commander, Major General Sintong Panjaitan, were sacked after the preliminary report came out. But none of these factors constitute evidence that the investigation was expertly or objectively conducted, and many of the most important questions remain unanswered. Some specific problems with the Commission are as follows:

¹ "Advance Report of the National Commission of Inquiry into 12 November 1991 Incident in Dili" (unofficial translation made available by the Indonesian Embassy in Washington, D.C.), Jakarta, December 26, 1991. Signed by M. Djaelani, Ben Mang Reng Say, Clementino Dos Reis Amaral, Harisoegiman, Anton Sujata and Sumitro.

For a detailed account of the killings, see Asia Watch, "East Timor: The November 12 Massacre and its Aftermath," December 12, 1991.

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1. Too Much Reliance on Military Sources

The Commission concludes that soldiers at the Santa Cruz cemetery, provoked by the stabbing of an army intelligence officer and a private and by the "provocative belligerence and aggressive attitude of the crowd" fired "spontaneously" to defend themselves, "resulting in excessive shooting." This version of events, which contradicts various foreign eyewitness accounts, was the inevitable result of the way in which the "on-site reconstruction" of the incident was undertaken. According to the Indonesian daily *Kompas* of December 11, 1991, the Commission team went to the cemetery on December 10, accompanied by the assistant chief of intelligence for the regional military command, Colonel Gatot Purwanto. Twenty soldiers from Infantry Battalion 303, one company of which took part in the shooting, took part in the reconstruction, showing the Commission members where they had been standing at the time the firing began. No one from the side of the demonstrators took part in the reconstruction.² A second reconstruction was conducted later after the first was deemed inadequate, but there are no reports of any demonstrator taking part.

A word should be said about the number of eyewitnesses interviewed by the Commission. The preliminary report says 132 such witnesses were interviewed, an impressive number. But this presumably includes the 26 people in custody in the Dili police headquarters (polwil) whom the Commission visited; 66 people interviewed in the military hospital where they were recovering from their wounds; and the 20 soldiers who took part in the reconstruction. The detainees and hospital patients were in military custody and not necessarily in a position to speak freely; moreover, *Kompas* reported that when the Commission members visited the detainees on December 4, they did not ask the patients many questions except about their health.³ The detainees, patients and soldiers together comprise all but 20 of the eyewitnesses seen by the Commission, and it is not known how many of the rest were members of the security forces, something that should be clarified in the final report. On December 14, the last day of the Commission's visit to Dili before returning to Jakarta, *Kompas* reported that members were going to meet with 50 people at the local parliament building, but it is not known how many people showed up, how many were eyewitnesses, or whether the interviews were conducted in confidence. Throughout the period of the investigation, the Commission had to contend with the fact that many people, including families of victims, were too frightened to come forward and testify.

When the preliminary report does acknowledge contradictory testimony (such as some witnesses saying the troops fired directly on the marchers and others saying that the firing started only after fighting broke out and a hand grenade was tossed), the Commission makes no attempt to assess the relative validity of the two accounts or explain the nature of the respective sources.

2. No Assessment of Military Behavior

The preliminary report spends three pages accusing the independence movement

² "KPN Saksikan Rekonstruksi Insiden Santa Cruz", *Kompas*, December 11, 1991, p.1.

³ "Sebaiknya Terima Dulu Utusan dari Sekjen PBB", *Kompas*, December 5, 1991, p.1.

Fretilin of fomenting trouble in Dili since 1989 and listing the various incidents in which "anti-integration" youth engaged in demonstrations. It says nothing about abuses on the part of the Indonesian military since 1975 or even since 1989, saying rather than the army employed an "approach based on love and affection."

It says nothing about troop movements on November 12, although this information may be contained in the final report. How many troops were present on the scene? From which units? Who ordered them there? The last point is crucial, since General Warouw, the operational commander for East Timor, may have been in a meeting with United Nations Special Rapporteur Pieter Kooijmans at the time when troop reinforcements were ordered to the cemetery. The preliminary report refers to "another group of unorganized security personnel, acting outside any control or command" who "fired shots and committed beatings." Who were they, and where were they?

If the statement is accurate, one possibility is that they were members of Battalion 700, whose Deputy Commander, Major Gerhan Lantara, was stabbed. According to the Jakarta newsweekly *Editor*, two platoons from Battalion 700 totalling about 75 men ran to the Santa Cruz cemetery after hearing via a walkie-talkie of Gerhan's stabbing.⁴ A local government employee who witnessed the demonstration was quoted in the same issue as saying he heard two army squads and one squad from the Mobile Brigade (Brimob) running behind the demonstrators after the stabbing yelling, "Just shoot! Don't let them get away!" Finally, a policeman interviewed by *Editor* said the trucks full of troops which arrived at the cemetery were from Battalions 700 and 744, not Battalion 803 which in theory had territorial responsibility for Dili and on which press attention has focused. These statements taken together appear to lend credence to the idea that the stabbing led soldiers from Battalion 700 to fire not in self-defense but in deliberate retaliation for the wounding of an officer. But there are still far too many unanswered questions. If these were the "unorganized" security forces, who were the others? If soldiers from Battalion 700 systematically took aim and fired, who were the "unorganized" troops?

The sacking of Generals Warouw and Panjaitan in the aftermath of the report's release is curious, since the report stresses that even the organized security forces were acting "without command" and says the killings were not ordered by nor did they reflect the policy of the government or the armed forces. If Warouw and Panjaitan were not responsible, why sack them? If they or their subordinates did give orders, why does the Commission report otherwise? If the reports which the Commission heard are correct that "troops arrayed in anti-riot formation fired shots aimed directly at the crowd", then it would appear that they were shooting on orders. If so, whose, and what is the evidence?

3. Poor Use of Exhumation as an Investigative Tool

The Commission, accompanied by four military officers, carried out a highly publicized exhumation of one grave at Hera Cemetery, apparently to see whether rumors that bodies had

⁴ "Dari Yon 803 ke Yon 433", *Editor*, Vol.5, No.12, December 7, 1991, p.33.

been tossed in graves without religious rites were true.⁵ The preliminary report notes that it was found that the victim "was buried in a coffin, completely dressed in accordance with Catholic tradition." But that should not have been the focus of the investigation.

The graves at Hera contained the bodies of the 19 people of the official death toll. The body of the New Zealand student, Kamal Bhamadhaj, was initially buried here before being exhumed and returned to his family. Who were the other 18? If the Commission was going to go the trouble of exhuming a body, why did they not try to identify it? Who, or which military unit, brought the bodies to the site? Why were 19 bodies selected for burial out of the many more killed? The allegations of bodies dumped without ceremony in mass graves did not refer to the graves in Hera Cemetery; the exhumation seems in retrospect to have been conducted more to exonerate the army of charges of insensitivity to religion than to collect new information.

4. Insufficient Efforts to Assess What Happened to the Others Killed

Commission members did go to areas in Hera, Tasi Tolu, Pasir Putih and Tibar outside Dili where there had been reports of mass graves but the preliminary report concludes that "no evidence could be obtained at these locations in support of these allegations." In fact, Djaelani told reporters that when they got to Tasi Tolu, they did not know where to look.⁶ It would have been useful for the report to describe what kind of reports the Commission was working with when they went to the areas in question and who they went with. If Commission members were accompanied by military officers, the chances of getting hard data would have been virtually nil. Of all the information the Commission could collect, the information on mass graves would have been most sensitive and most dangerous for ordinary East Timorese to bring out. While the army could not deny that the killings had taken place at the cemetery because of the presence of foreign eyewitnesses, it could and did reject the idea of mass graves or dumping of truckloads of bodies because no one safely outside East Timor saw actual burials. (An Australian reporter described the site near Tibar in some detail; the Commission made no effort to interview him.) Only those living near the sites would have known the location of those sites in detail, and the possibility and fear of reprisals for giving incriminating evidence would be high. The final report should state the precise nature of the sources for the various accounts of mass graves and an assessment of the Commission's capacity to investigate them.

Even if the likelihood of witnesses coming forward to testify about mass graves was small, the Commission, knowing that this was an issue in East Timor, might have tried to consult experienced investigators from countries where similar reports have surfaced. They could have tried to use a methane probe, easily available from a gas company, for example, which might pick up evidence of decomposing bodies. They could have asked the advice of archaeologists — a simple instrument called a T-probe to test differences in soil density, often used by archaeologists, could have helped the team in its efforts to locate graves. Another technique that

⁵ According to *Kompas* (December 13, 1991), the officers included the subdistrict military commander for East Dili, Lieutenant Wildan Sayuti; the regional intelligence commander, Colonel Gatot Purwanto, and an army doctor from the local health department, Captain Zeth Lenggu.

⁶ "Australia tak Salahkan Indonesia", *Kompas*, December 14, 1991, p.1.

could have been used, although perhaps too expensive, is infrared photography. Failure to detect mass burial sites with such techniques would not be conclusive evidence that the sites did not exist, but it would be evidence of a more thorough investigation.

In a critical omission, the report fails to answer the question, if no evidence could be obtained to support allegations of mass graves, what happened to the other 31 killed (the report admits the death toll was "about 50", still too low by most independent estimates) and some 90 still missing? The report faults the "careless handling" of those who died, saying that *visum et repertum* (autopsies) were performed but the deceased were not identified. What procedures were in fact followed in performing these autopsies? How many were performed, and by whom? If there were more than 19 autopsies, the Commission should have tried to find out what happened to each and every body. What happened to the bodies after the autopsies were completed? Where are the autopsy reports?

5. Ambiguous Statement on Prosecutions

The preliminary report concludes that action must be taken against all who were involved in the incident suspected of having violated the law, and that those individuals must be brought to trial. Given the publicity about the 26 people in military custody for their involvement in the November 12 demonstrations and five people detained for alleged involvement in an earlier incident on October 28, the report's failure to mention prosecutions of military officers leaves the unfortunate impression that only civilians will be brought to trial.

Conclusions

The preliminary report does raise serious questions about military behavior on November 12, but it is neither thorough nor objective, and the lack of competence of Commission members in investigating a mass killing is all too clear.

The need for an experienced international team of investigators with no connection of any kind to the Indonesian government to undertake its own fact-finding is more critical now than ever before. There is not much time left. Bodies will decay making identification all the more difficult; memory of specific details will fade; the "official version" will be increasingly accepted as fact. The international community must continue to press the Indonesian government for a full and accurate accounting of what happened. The preliminary report deserves no accolades.

* * * *

For Further Information

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News From Asia Watch is a publication of Asia Watch, an independent organization created in 1985 to monitor and promote internationally recognized human rights in Asia. The Chair is Jack Greenberg, the Vice Chairs are Harriet Rabb and Orville Schell, and the Executive Director is Sidney Jones.

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January 3, 1992

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